



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: July 19, 2022

TO: Mayor and Councilmembers

FROM: Environmental Services Division, Sustainability & Resilience
Department

SUBJECT: Solid Waste Franchise Agreement Procurement

RECOMMENDATION: That Council:

- A. Direct Staff to negotiate a one year extension of the current solid waste hauler franchise agreement;
- B. Direct Staff to negotiate with MarBorg Industries, the current solid waste hauler franchisee, for a new solid waste hauler franchise agreement, subject to commencement of a competitive procurement process if a new franchise is not obtained within eight months after start of negotiations; and
- C. Rescind Council's previous limitation on the scope of work under the professional services agreement with R3 Consultants and authorize the Sustainability and Resilience Director to direct R3 to perform the full scope of work as required to complete procurement of a new solid waste hauler franchise agreement.

EXECUTIVE SUMMARY:

The City is preparing for the expiration of its current solid waste franchise hauler agreement in June 2023. The solid waste industry has changed significantly since the City first entered into a franchise agreement with MarBorg Industries in 2003. In the last ten years, a series of legislative mandates have been signed into law requiring recycling and organic collections services in certain sectors and establishing targets to reduce statewide disposal of organic waste. Implementing these mandates into a future franchise agreement will involve significant changes. Additionally, evaluating and incorporating lessons learned over the course of the existing agreement will be critical to developing a modern agreement in alignment with industry best practices. Because of these changes, an entirely new hauler franchise agreement is needed.

The City has two options for moving forward with establishing a new franchise agreement: direct negotiation or competitive procurement. Each of these processes has benefits and challenges and will involve extensive work and a minimum timeline from 6 months up to 24 months. Staff is, therefore, recommending negotiating a one-year extension to the

existing contract with MarBorg Industries in order to ensure sufficient time to undertake these efforts and ensure the best service for the community.

On June 13, 2022, the Council Sustainability Committee voted 2 to 1 to recommend pursuing a direct negotiation with MarBorg, establishing an eight-month period to come to an agreement, while maintaining the right to conduct competitive procurement if an agreement is not reached during that time, as well as extending the existing contract by one year.

On April 12, 2022 Council approved a professional service agreement with R3 Consultants (R3) for expert consulting services relating to developing and negotiating the new agreement. At that time Council only authorized R3 to complete up to task 7. With the recommendation to directly negotiate with MarBorg, staff is requesting that Council rescind the limitation and authorize the Sustainability and Resilience Director to direct R3 to perform the full scope of work as required to complete procurement of a new solid waste hauler franchise agreement, which may include competitive procurement if direct negotiations with MarBorg do not result in a new franchise agreement acceptable to Council.

DISCUSSION:

In 2003, the City executed a franchise agreement with MarBorg Industries for a term of ten years for collection services of recyclables, organics and solid waste. The current agreement terminates on June 7, 2023. Over the last decade, the solid waste management industry has changed dramatically and necessitates a wholesale revision to how the City contracts for solid waste hauler services.

In preparation for a new agreement, the City contracted with R3 to provide expert analysis of the existing solid waste program and make recommendations for the development of an agreement that ensures compliance with numerous new legislative requirements and addresses elements of the current contract to increase clarity, transparency, and accountability.

R3 has also provided guidance to the City regarding its option to either enter into sole source negotiations with MarBorg or solicit competitive proposals for the next agreement. The City's solid waste franchise agreement is a long-term, financially significant commitment that provides essential services; therefore, it is important to develop an agreement that will address the community's needs for the decade to come, while responsibly addressing the growing complexity of the industry and obtaining the best value for ratepayers.

Legislative Requirements

Over the last ten years, the solid waste industry has undergone a series of significant changes in response to post-consumer material markets and state legislation, driving the need to create a more adaptive system. Some of the major legislation includes Mandatory Commercial & Multi-Family Recycling (AB 341 (Chapter 241, Statutes of 2011)) and Mandatory Commercial Organics Recycling (AB 1826 (Chapter 727, Statutes of 2014)), which require commercial and multi-family residents to subscribe to recycling and organic collection services and Short-Lived Climate Pollutants (SB 1383 (Chapter 395, Statutes of 2016)), which is intended to reduce greenhouse gas emissions, such as methane, and address food insecurity in California. SB 1383 imposes significant new administrative requirements on jurisdictions, including program implementation, reporting to CalRecycle, and enforcement. The following are not included in the City's current agreement and will need to be incorporated into a new agreement as a result of these momentous changes:

New Containers/Lids and Labeling – The City must adopt a collection system that complies with prescribed labeling and container or lid color for all account holders. This includes providing new containers or lids for those that do not comply. This City's brown trash containers do not comply as SB 1383 requires them to be grey or black.

Contamination Monitoring – The new law includes annual inspection requirements to verify self-hauler compliance, including inspections of Tier One and Tier Two commercial edible food generators to verify compliance with food recovery requirements and annual residential and commercial route reviews to visually assess container contamination.

Contractor Reporting and Data Tracking – There are a number of reporting requirements that the contractor is responsible to fulfill, including type of organic waste collection service(s) provided to generators, results of waste evaluations performed to minimize contamination and the number of resulting targeted route reviews, and the total number of generators that receive each type of organic waste collection service provided.

Modern Agreement and Best Practices

In order to modernize the agreement and align with industry best practices, it will be imperative to evaluate the following to increase overall transparency of the future agreement and increase the effectiveness of the agreement as a core tool for providing essential services:

- **Agreement Transparency** – A comprehensive update of the franchise agreement is necessary to thoroughly detail terms and conditions and increase the clarity and transparency of the agreement.

- **Performance Metrics** – Adding metrics and tracking can help the City determine if a contractor is in compliance with the agreement and identify any opportunities for improvement or areas where they are exceeding the requirements.
- **Rate Adjustments and Hauler Payment** – Evaluation of various types of rate adjustment and hauler payment methodologies that could be integrated into a new agreement. The current methodologies are exceedingly complex due to historical adjustments and should be updated and streamlined to provide additional clarity and accountability.

Options for Securing a Modern Agreement

There are a two pathways the City can take to secure a new, modern agreement incorporating the recommended performance metrics, industry best practices, and regulatory requirements:

1. **Direct Negotiation Process** – Sole source negotiation between the City and MarBorg, reserving the right to conduct competitive procurement; this will take approximately 6-8 months to complete.
2. **Competitive Procurement Process** – Open to all qualified contractors; typically can be completed in 6-12 months, and may also require an additional 6-12 months for transition if a new company is selected

Due to all of the changes described above, an entirely new agreement is required. R3 recommends that, as a starting point regardless of the pathway selected, the City draft a modern agreement to ensure that it contains the recommended performance metrics, industry best practices, and regulatory requirements. Once a completed draft addressing the City's essential deal points is prepared, it can be shared either with MarBorg for negotiations, or included as an attachment to the RFP Package to allow for competitive proposals to be submitted with comparable rate packages.

Following is a listing, provided by R3, of the general pros and cons of sole source negotiating with the City's incumbent hauler verses a competitive procurement process.

Negotiation Process	
Pros	Cons
<ul style="list-style-type: none">• Can develop a new Agreement• 6-8 month process• Lower potential for unanticipated challenges	<ul style="list-style-type: none">• Either party can delay or stop negotiations at any time without a predetermined end date

<ul style="list-style-type: none"> • Preserves/leverages existing relationship with hauler • Easier transition period or transition related hurdles (cart delivery, new routes, billing, etc.) • Incumbent hauler has the best service information 	<ul style="list-style-type: none"> • Negotiations can be used as stall tactics to remove the opportunity for the City to conduct a proper competitive procurement process • Financial impact for constituents may not be as favorable if the starting point for negotiations is the current Agreement terms • No opportunity to experience different services / provider • No testing of the marketplace to see if rates are competitive • May appear as less transparent • No strong leverage to create a new contract
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Competitive Procurement Process	
Pros	Cons
<ul style="list-style-type: none"> • Requires proposers to negotiate through the entire process or forfeit a bid bond • City defines comprehensive package of provisions as opposed to negotiating each provision • More competitive service and rate package than in negotiations • Limited need to negotiate the contract after evaluation team recommendation has been made. • Opportunity for new technology, industry best standards and innovate new processes • Better leverage than negotiations for creating a new contract 	<ul style="list-style-type: none"> • 12 month process • No guarantee that the rates will remain the same or be lower • No guarantee of broad proposal pool • Generally requires a 12 month transition period if new contractor is selected • Transition can create initial service challenges

City Council has previously voiced concerns relating to the competitive procurement process. The top concerns included:

- **Concern #1: Loss of local jobs:** California Labor Code § 1072 protects displaced employees by mandating that jurisdictions who conduct a competitive procurement process for solid waste services must provide a 10% bidding preference to contractors and subcontractors who agree to retain the employees of the prior contractor/subcontractor for a period of at least 90 days. Typically, incoming haulers want to hire as many of the current employees as possible because current employees already have a deep understanding of the City routes and landscape. This cuts down on the training and keeps the transition period much smoother. When MarBorg acquired the citywide agreement in 2013, they similarly acquired employees previously employed with Allied Waste.
- **Concern #2: MarBorg's local investments:** MarBorg owns and operates both the Construction and Demolition (C&D) material recovery facility and the Anti-Freeze, Battery, Oil, and Paint (ABOP) recycling facilities located in downtown Santa Barbara. If a new contractor were selected, criteria could be added to the agreement or the City's municipal code that would require C&D haulers operating within the City limits to direct their materials to the MarBorg facility and the City could contract with MarBorg to continue running the ABOP facility.
- **Concern #3: Competition will result in lowest bidder selection:** Selection criteria are carefully designed and utilized in a competitive procurement process instead of the lowest bid method to ensure that the City can select a contractor that meets all of the community's needs. Typically at least the four categories outlined below are used to evaluate proposals and can be weighted based on the City's priorities:
 - **Qualifications:** includes details on the staff qualifications, any relevant litigation, and references with their current contracts.
 - **Technical Approach:** includes the details on how the contractor is proposing to carry out the transition and collection operation. This gets down to the granular level of details, such as number of routes by commodity, number of trucks, and staffing required to carry out the operation.
 - **Sustainability:** includes details on the facilities used for disposal and processing of recyclable material and organic material.
 - **Service Rates:** includes all of the rates for the required services.

It is important to note that selecting a competitive procurement process does not preclude the City from ultimately selecting its current hauler.

R3 Contract Tasks

On April 12, 2022 staff brought a professional service agreement with R3 for industry expertise in developing and negotiating the new agreement. Council directed staff to return with a more in depth discussion relating to procurement options, and because no decision was taken regarding direct negotiation versus competitive procurement, Council only authorized R3 to complete up to task 7 of their proposed scope of work, which include analyzing and evaluating the existing agreement, conducting stakeholder outreach, and preparing a draft modern Solid Waste Service Agreement.

R3's ongoing assistance is required for the negotiation and drafting of a new franchise agreement with MarBorg, and for the development of a competitive procurement if direct negotiations with MarBorg are not successful. Therefore, Council is requested to rescind the prior limitation and authorize the Sustainability and Resilience Director to direct R3 to perform the full scope of work, as required to complete procurement of a new solid waste hauler franchise agreement, which may include competitive procurement if direct negotiations with MarBorg do not result in a new franchise agreement acceptable to Council.

One-Year Extension of Current Contract

Because of the tremendous amount of work required to develop a completely new agreement that will meet all of the City's needs and to ensure that enough time is available for a smooth transition to a new service paradigm, whether with the incumbent hauler or with a newly selected one, staff is recommending negotiating a one-year extension to the existing contract with MarBorg.

BUDGET/FINANCIAL INFORMATION:

The City's current solid waste contract is valued at approximately \$450 Million over the fifteen-year term, and is therefore a significant financial consideration. The annual consideration paid to MarBorg depends on a wide variety of factors, including the number and type of customer accounts, and increases each year based on changes in the Consumer Price Index and changes in tipping fees under the agreement with the County, among other factors. Currently, staff estimate to pay MarBorg \$29 million in Fiscal Year 2023. Based on existing conditions, extending the franchise agreement with MarBorg will likely cost approximately \$31 million. As usual, the cost to compensate MarBorg for its services is included in the rates paid by solid waste customers.

The cost for the remaining R3 contract tasks is \$92,215, bringing the total value of the contract to \$149,550, as originally proposed to Council. Adequate expenditure appropriation exists in the Solid Waste fund for this contract in FY2023.

ATTACHMENT: R3 Contract and Scope of Work

PREPARED BY: Alelia Parenteau, Acting Sustainability and Resilience Director

SUBMITTED BY: Alelia Parenteau, Acting Sustainability and Resilience Director

APPROVED BY: City Administrator's Office